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COMMUNICATIONS.

WHAT IS A CONSTITUTIONAL HISTORY OF THE UNITED STATES?

"Constitutional history has a point of view, an insight, and a language of its own," writes Bishop Stubbs in the preface to his "Constitutional History of England;" "it reads the exploits and characters of men by a different light from that shed by the false glare of arms, and interprets positions and facts in words that are voiceless to those who have only listened to the trumpet of fame. The world's heroes are no heroes to it, and it has an equitable consideration to give to many whom the verdict of ignorant posterity and the condemning sentence of events have consigned to obscurity or reproach. Without some knowledge of constitutional history it is absolutely impossible to understand the origin of parties, the development of principles, the growth of nations in spite of parties and in defiance of principles. It alone can teach why it is that in politics good men do not always think alike, that the worst cause has often been illustrated with the most heroic virtue, and that the world owes some of its greatest debts to men from whom its very memory recoils."

As applied to the United States, the term constitutional history has the same meaning as applied to other countries. It is a history of the origin and growth of a civil system embodied in a constitution, whether written or unwritten. This civil system finds authoritative expression from time to time in laws, statutes and constitutions of government. In the United States these expressions are dual, being those of the states and of the United States, yet all founded on common principles. In the United States national and state laws and constitutions form a civil unit. The record of this unit is voluminous and, in the aggregate, probably more complete than any similar record of other peoples, times or countries. There are the constitutions and laws themselves, no small amount of evidence; there is the mass of authoritative exposition by the courts, and the greater mass of testimony bearing on the enactment of the laws and the making and adoption of the constitutions. Closely related to all this is the evidence reciting the origin and conduct of parties, the ideas and influence of statesmen, and the writings of theorists and philosophers. The entire testimony bears back to principles of government, few in number and comprehensive in character. A constitutional history is a narrative of the apprehension and application of these principles by the American people.

The limits which an American historian sets to his work are determined by the phase of activity which he attempts to describe. He cannot describe all the phases of national life. If his field is in constitutional history he discovers boundaries which, like a ruling canon, tend to preserve the unity of his work. What are these boundaries?

In America these boundaries are conventionally defined with tolerable accuracy, because the civil system of the country has been given a written form. The unwritten constitution is a term but dimly understood in America. Practically the unwritten constitution—using the word constitution as synonymous with “system of government”—in America, means little more than the manner of doing the public business, the mere administration of functions. The very vagueness of the idea suggests its limitations. With us the statute supplants or confirms the custom; the ruling in a department of government; the mere method of doing the public business as this is committed to the hands of a public servant may be supplanted by a later ruling or by the method of a successor in the office. The aggregate of rulings and official methods constitutes practically the approximate realization of an unwritten constitution in America. The approximation does not rank with the written constitution or the statute. To whatsoever extent the strife and turmoil of party politics enter into the vague aggregate—the unwritten constitution—there is undoubtedly an opportunity for the historian to paint in vivid colors the apparent conduct of men. The scene thus portrayed, however, forms no essential part of the narrative of constitutional matters, and the extent to which the historian will divert his readers from the main current of constitutional affairs will depend upon the sense of historical unity with which he writes, the degree of discrimination which marks his judgment as a colorist, and the space which he thinks must be given to his narrative of the main subject. If his work covers a long period of time, and must run into several volumes, he will hesitate to tempt fate by any undue account of subsidiary matters. It requires effort to read as well as to write a constitutional history. Subsidiary matters which shed light on the main theme must be admitted to the narrative. Whatsoever in the history of the unwritten constitution will make clearer the origin and development of civil notions has a just demand on the historian. The relativity, however, must be plain and indisputable.

The historian of a system of government must at the threshold of his work determine the critical question—to what extent must the history of politics and parties be narrated in order to make clear to the reader the nature and evolution of the principles which underlie the governmental system? Whatever decision the historian makes—

whether to include or to exclude political matters—he will awaken adverse criticism. There seem to be sound reasons for the exclusion of political history, except such a narrative of politics as will make the main theme plain to the reader. The exclusion of military history from a narrative of constitutional affairs has long since been approved by the common judgment, yet the causes and the consequences of war are frequently in close relation to the apprehension and application of the principles of government. Indeed, war is a kind of armed politics. In a strictly military history, no more of politics would be narrated than is necessary to show causes and effects. In a political history, military affairs must be similarly treated. In a constitutional history, both political and military affairs must be treated as tributaries to the main stream of events. The Revolution and the Civil War are pertinent illustrations. The military activity of the Revolution was only one phase of the reorganization of American civil affairs in the eighteenth century. Expostulation preceded the appeal to arms, and civil adjustments followed it. The Articles of Confederation and the Constitution embody results to which military activity contributed. The Constitution in its original form expresses the civil system which took shape after the cessation of hostilities. It is necessary, therefore, for the constitutional historian to narrate the course of the Revolution as it illustrates the principles for which the Americans were contending. Equally illustrative is the Civil War. It grew out of differences of opinion as to the true principles of representative government in America. Its immediate effect was a reorganization, or amendment of the civil system. The war was in fact an armed political agency of reorganization. To that extent its history must be narrated.

A person who devotes many years to historical research changes his concepts of the relativity of things several times. If he begins his researches early in life and carries them forward without interruption till he is past middle life, he simplifies his first conceptions by eliminating much that he at first thought essential. The ideal history which floats in his mind is a most remarkable work. It tells all that can be told of everything that can be told. It is constitutional, political, economic, military, social and literary to the last detail. It sweeps the field of human life. He plans it on a large scale, and wisely so. After many years' research, he discovers lines of cleavage in his theme, and he makes the discovery with joy. After making the circle of the period he is investigating, he discovers vast sections of it which he is generous enough to leave to be measured and described by others. He gradually gets acquainted with his own mind, which means with his own limitations, and wisely selecting the field which he will cultivate, he is happy to confine himself within its metes and bounds.

If he labors in the field of constitutional history, he at last discovers that the tributaries which enrich it are innumerable and that one life is too brief to permit him to trace each to its fountain head. The political tributaries soon become most familiar to him, and it is probable that he will ascend them frequently and at length. He soon discovers that in this world, as Goethe has said, there are few voices but many echoes. The principles of government are few; their interpretation varied, confusing and often contradictory. As his chief theme is the origin, apprehension and application of principles of government, he wisely utilizes only so much of the history of parties and politics as will explain this origin, this apprehension and this application. He is justified in observing a reasonable brevity in his narrative of strictly political matters. Writers equally equipped are narrating the political history of the country. Why should he merely paraphrase their researches? He must narrate as much of the political history of the country as is essential to a clear understanding, by the reader, of the subject which is his main theme—the system of government in force in America. Thus, at the last, the constitutional historian eliminates from his work all unessential matter in order to concentrate his readers' attention on the origin and development of civil principles. If it be said that the reader will be satisfied to find an elaborate political narrative in conjunction with an equally elaborate narrative of constitutional matters, it may be said, in reply, that before the reader comes the publisher. There are limits beyond which neither author nor publisher can safely pass. Again, there are limits which the reader quickly detects—namely, the evidences of authority with which an author speaks. Research in the field of constitutional history requires devotion and time. An author is practically precluded by the time limit from entering with equal thoroughness into both the constitutional and the political field. One or the other he will cultivate better, and the less valuable results of his labors will become the measure of all his labors. He, therefore, wisely leaves the political field to be exploited intensively by others, well satisfied if time and fortune suffer him to pursue his researches in his chosen field.

The constitutional historian is confronted by another critical question: To what extent shall he presume to declare the motives of men? If he stops a moment to weigh and interpret his own motives in life, he will stop many moments before he essays to describe the motives of other men. The search after "motives" is not unlike the search after the philosopher's stone. The older histories—notably the Roman—abound in disclosures of motives. The political historian is sorely tempted to venture his version of motives because he is dealing much with individuals of power and place. The constitutional his-

torian deals with groups of men—congresses, legislatures, conventions, masses of men by commonwealths—rather than with individuals. No system of government is the work of an individual. Every system is composite. Constitutional history is therefore a history of ideas and systems of thought, rather than of individual men. Again, the constitutional history of the United States differs from that of a monarchy: it is the history of a representative democracy—and in such a democracy it is ideas, not men, that constitute the principal forces in the state. As the constitution of Massachusetts expresses the matter—ours is “a government of laws and not of men.” It is a truly great discovery which the historian has made when he is certain that the account of “motives” which he gives is the truth, the whole truth and nothing but the truth. But a vivid account of “motives” relieves the tedium of many a page of history, and gives a picturesqueness which accuracy itself seldom imparts.

While a constitutional history is more than the history of a document, it is mainly a history of the origin, formation, adoption and exposition of a document.

This does not mean that it is merely a history of words and phrases in that document, although the words and phrases are milestones in the progress of civil thought. It may safely be premised that no passage in an American constitution is without history. Every idea read into the civil system is the survival of prolonged discussion, and it is by following the discussion that we trace the development of the system. An American constitutional history must therefore be a narrative of discussions and expositions of civil notions, by responsible people. The responsibility, which rests ultimately with the people, finds a voice in legislatures, constitutional conventions, and courts of law. An interesting exposition by theorists, writers and commentators runs parallel with the official interpretation. The historian must take both agencies into account—the official and the unofficial—but he must not confuse them, nor must he suffer merely doctrinaire notions, such as are sometimes met with in academic circles, to color his narrative. The people, their ideas and their doings are the main theme. A constitutional history must follow authority and not be characterized and dominated by abstractions and ultra-refinements never met with in practical affairs. To whatsoever extent these refinements, abstractions and doctrinaire notions enter into the record of civil thought, they must be accounted for: it is enough to hold the mirror up to nature. The classic historians do not divert our attention by excursions into the domain of mere abstraction.

Another critical question which the constitutional historian must answer is: To what extent shall the opinions of the author be inserted?

The best answer is, to the extent that the author's narrative itself furnishes a series of comparisons which enable the reader to draw conclusions. The basis of criticism and comment is comparison. Historians usually do not leave their readers ignorant as to the wisdom or folly of men's actions, according to the opinion of the historians themselves. Comment and criticism may add levity to a narrative; they may be more interesting than the narrative itself. A person qualified to write a constitutional history is likely to have opinions which will interest if they do not instruct his fellow-men. But the historian must anticipate the reception which must be given to a work which is all sermon and no text. A person who is capable of reading a constitutional history intelligently is capable of drawing his own conclusions. Indulgence in critical comment may exclude more valuable matter, or so discolor the narrative as to make it impossible for the reader to draw his own conclusions. There is peril in criticism, in historical writing, because, after all, it is the strictly narrative historian who is longest read. Criticism reflects the thought of a period—an accurate narrative may be a possession for all time. It behooves the historian to attend to his narrative and make his comments subsidiary.

Finally, there are questions of style, scope and purpose, and the use of authorities, which are perhaps the most critical of all. It may be said, safely, that a book which a reader reads without thought of the author, has for him, at least, a pleasing style. The best style runs along lines of least resistance, and these lines themselves run according to the theme. Herodotus still charms the world with his simple narrative, and suggests the proper style for historical writing. The historian is tempted to suffer the records to speak for themselves and thus to reflect, in a manner, the times they record. On further reflection, he may decide to recast the record into his own speech, a decision less commonly executed than one might at first suppose. A constitutional history of the United States can have justly but one purpose—to narrate the life of the civil system under which, as a people, we are organized—and this purpose must measure the scope of the work. The historian is the creature of his authorities, whence it follows that he must make wide and accurate research. What number of volumes, what archives, state or national, what pamphlets, manuscripts, treatises, histories, brochures, newspapers, etc., etc., he will examine must depend upon his ideas of preparation. He must determine what use he will make of secondary authorities, one of the nicest decisions he is called upon to make. He must be prepared to meet gaps and chasms in the records, and later be severely criticised for not filling these same gaps and chasms. He must learn the measure of equivalents, so as to be able to write a continuous narrative.

He must remember that his reader, no matter how devoted to the subject, needs his frequent help, which may best be given by comparisons, and occasionally by judicious repetition in the nature of a summary. He must remember that his theme includes the whole nation, therefore it becomes him to leave no portion of the country unexplored. His purpose is to bring again to mind the course of affairs. His text consists of civil principles: his sermon is the apprehension and application of these principles by the American people.

While pursuing his researches among the sources, the historian will be blind indeed if he does not speedily discover the dominating trend of public affairs, and the true basis of human action: a trend and a basis which are essentially industrial. The laws of biology apply to history. Government is an organism, and, like an organism, it develops. Herein consists the true interpretation of history, that the historian is able and willing to record what he sees and observes. The great theme is the nation, and it is great because it is an organism. Dogma cannot forever conceal its qualities, attributes and functions. Theory cannot always miss its true nature. The social organism remains to the end the subject of the story. Arbitrary conventions among men may for a time retard the progress of society, but slowly, though at times with the terrible swiftness of revolution, the national organism comes to its own, and the thought of men is corrected by hard experiences.

Underneath legal concepts of the state, there will be found to exist an industrial spirit which demands recognition. Free industry means free politics, and sane industry means morality. The constitutional history of the United States is a chapter in the evolution of democracy. That chapter narrates many perils, many errors, many high hopes. It narrates a growth of the human spirit, an evolution of ideas and ideals. The laws which regulate the narrative are essentially biological, because the theme is humanity and the individual.

A history of the United States conceived and written along these lines is a constitutional history which will enable its readers "to understand the origin of parties, the development of principles, the growth of the nation in spite of parties and in defiance of principles," presenting "a regularly developed series of causes and consequences," and abounding "in examples of that continuity of life, the realization of which is necessary to give the reader a personal hold on the past and a right judgment of the present."

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